

AN  
Impartial Account  
OF THE  
T R Y A L  
OF  
FRANCIS SMITH,  
Upon an  
INFORMATION

Brought against him  
For Printing and Publishing a late Book commonly known  
by the Name of

Tom Ticklefoot, &c.

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AS ALSO  
Of the T R Y A L  
OF  
JANE CURTIS,

Upon an INFORMATION brought against her for  
Publishing and putting to Sale a Scandalous Libel, called

A Satyr upon Injustice:  
OR  
Scroggs upon Scroggs.

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INFORMATION  
ON THE  
FRANCIS SMITH  
DAY

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# Impartial Account

O F T H E

## T R Y A L

O F

### FRANCIS SMITH, &c.

**O**N Saturday the seventh of this *Instant February*, 1679. at the *Guildhall*, in the *City of London*, there was an Information between our Sovereign Lord the *KING*, and *Francis Smith* Bookseller, brought before *Mr. Justice Jones*, one of the *Judges of the Kings Bench*; and after the *Jury* was sworn, *Mr. Holt* began after this manner:

*Mr. Holt.* May it please your Lordship, here is an Information preferred in behalf of the *KING* against *Francis Smith*, Bookseller, and it sets forth, that, after *Sir George Wakeman*, *Will. Marshall*, *Will. Runley*, and *James Corker*, were indicted and tryed on the 18th. of *July*, 1679. for divers *High Treasons* at the Sessions-house in the *Old-Baily*, before *Sir James Edwards*, then Lord Mayor of *London*, and the Lord Chief Justice *Scroggs*, and others, the Defendant, *Francis Smith*, published a scandalous Libel, relating to the late Tryals, which was intituled, *Some Observations upon the late Tryal*, &c. the words are particularly set forth in the Information; to which the Defendant pleads not guilty; but if we prove it upon him, you of the *Jury* are to find for the King; and if you find he is not guilty, you are to say so, and no more, &c. Then *Mr. Recorder* spake to this effect:

*Mr. Recorder.* My Lord, I am of Council against the Defendant for the King, who stands informed against for a very great Offence: the Information particularly sets forth, that whereas some certain persons were indicted at the Sessions-house in the *Old-Baily* before the then Lord Mayor, *Sir James Edwards*, and other persons then in commission of *Oyer and Terminer*, and *Gaol-delivery* for that place, and particularly, my Lord Chief Justice *Scroggs*, and after the Tryal was over, and the persons thereupon acquitted, there was a Book, which is mentioned in the Information, printed and published, and it is a Book that is known by the name of *Tom Ticklefoot*;

a very abusive thing ; but persons now begin to grow wonderful witty in the beginning of their Books, in hopes to insnare people to read them, and to prevail upon them so far as to make them believe there is somewhat extraordinary by the title. You see, malice finds out all the waies in the world to insnare and gain upon the people ; to so bad an Age are we come.

But I confess, it is the second time ever since I had the fortune or happiness to know this City of *London*, that I have known such expectations, as have been upon two Causes in this place : the first was but two daies ago, the second is at this time, wherein is truly, a sort of countenance, I am afraid, too much given by persons that dare pretend to be no other sort of Protestants, but can impudently outface all sort of Governours. Now, as all persons ought to abhor and detest that damnable Doctrine, that men hope to be Saints in another world, because they may commit Murders in this ; so this ought too as much to be condemned by all Protestants as the other, that men shall endeavour to rebel, and be factious in this world, that so they may be reckoned good Subjects : the One are as far from being good Saints, as the Others from being good Subjects. I take this occasion to speak all this before your Lordship, and this Court, because I hope the City of *London* will never be corrupted by the base insinuating of some idle busie-bodies in it. Men, who cannot, or will not be pleased, because (forsooth) every thing does not go according to their mind and fancy ; and though by no means they will allow the *POPE* to be *Infallible*, yet every factious fellow will expect, that every one should pay him that tribute as *Infallibly*, as if he were the only fit person to give Measures to Government and Governours.

When we come to have extraordinary cases and persons, extraordinary occasions ought to be taken to inflict due and just punishments upon them.

And when they shall dare to come to disparage great men that act by *Supream Authority*, men that act by their *Consciences*, and because they cannot be steered by the humours of these sort of people, therefore they must be looked upon as *Papists*, or at least, as *bribed*, because they cannot comply with that base humour which some sort of persons have.

I take notice of this to your Lordship, because one that is intrusted in as great a place for the welfare of this Nation, as any, whosoever, is extremely concerned in the affair of this day ; I mean, the Lord Chief Justice of the King's Bench, who, being assisted with several

veral other Judges, because, as far forth as it did appear to him, did deliver the sense of the whole Court, who, for acting according to his Conscience, and as he ought to do, hath been *libelled* and *reproached* with as base a *Book* as ever was written against any Magistrate whatsoever: If such things as this shall be permitted, then there will be an end of your *Lordships* sitting here, or any where else, or of any other that shall act as a Magistrate ought to act, and that shall not be afraid to do his duty. But such is the happiness of this *City*, in this *Jury*, that, I must confess, I receive so much the greater satisfaction that it comes before them: for as I know the men to be men of Loyalty and Affection to the Government, and will be so just to him, that if they do not find him guilty of the matter of the Information, they will acquit him; so, on the other side, they will not think themselves to be awed by a *multitude*, or inflaved by private insinuations, to debase their consciences, either in respect to God above, or to the King, his Vicegerent here on Earth; therefore observe your duty to both, that you may render to *Cæsar* the things that be *Cæsars*, as well as to God, the things that are God's.

Now as the KING is God's Vicegerent, so is every Magistrate the KING's Vicegerent in that particular.

I would not take up so much of your *Lordships* time, but that I see this is a matter of great expectation: and I know that every word is taken in short-hand, to be commented upon as persons humors shall steer them. I do think, as being the Mouth of the *City of London*, it is my duty to speak thus much, that I hope, nay, I may dare confidently affirm, that the Generality of the *City of London*, all good men, and men of abilities &c. Are for the KING, and the Government, as it is now established by Law.

[At which there was a general hem through the Court.]

Having said thus much against this person Mr. Francis Smith, I must say, that if the way of common report were evidence enough to convict a man, he would be convicted without any more adoe, but such is the happiness of our Lawes, that they expect testimony, besides common fame.

I would rather a great deal it might be a caution to Mr. Smith, if there had not ben many before, and that he could not be convicted, and the Evidence not plain in proof against him.

Well, he printed this Book in the name of another person, one Mrs. Brewster, he sold several of them in Quires to several people, and Mrs. Brewster questioning wherefore he should put her



her name to this Book, truly, he said, he intended no harm to her, for he was resolved to save her harmless, and this we will prove to you; and likewise that several Books have been taken in his shop, and he justifying himself in what he had done, and his further resolution to expose them still to sale: and if we shall prove this to you, there will be an end of all sort of Justice, if in case that you, who are the only means of bringing men to justice, will not contribute to have justice executed where it ought to be; none can be legally punished, unless they be legally convicted; and I doubt not your honesty and loyalty, but that you will do your part by conviction, and by justice too.

Against all Libellers, I am sure, there is Law enough, and every honest man will endeavour to have it put in execution against them, as far forth as it lies in his way. I hope the generality of those that are here, do come to shew an abhorrency against this person informed against, and not to give any countenance to such base actions.

*Mr. Williams.* Council for the Defendant. My Lord, the Libel is sufficiently infamous, we must needs own, and I do not come to justify the thing, neither *Mr. Smith* my Client, nor any body else that shall be guilty of it: The question is, whether he be guilty of, &c. as it is laid in the Information.

*Mr. Recorder.* Sir do you admit the Record?

*Mr. Justice Jones.* If you do not admit it, you must call in your witnesses, and prove what you can.

*Whereupon Rob. Stephens, Anne Brewster, and Margaret Clark were called into Court, and stood up behind the Jury.*

*Mr. Williams.* Sir, If you will give me leave, you shall hear what we will admit.

*Mr. Recorder.* Come, come, Sir, if you do not admit the Record, we will have none of your Anticipations.

*Mr. Williams.* What call you your speech but Anticipation?

My Lord, the poor man, my Client, is a languishing, sick, and dying man, and one that is almost ruined, if any submission will serve the turn, he will give all the submission that is fit for a man to give: all that we say is this, that he did not order this to be Printed, as it is laid in the Information.--But I think we may admit---

*Mr. Fettiplace* said, (who was Council on the same side) he had no such order given him by his Client, as to admit the Record.

Then they were just going on to swear the witnesses, but

*Mr.*

Mr. Justice Jones said, *It would be very well if they would admit, &c. Defendant come to submission.*

Mr. Recorder. Ay, that is your best way, for it would be a great means to testifie that your submission is really intended as a submission ; but if it be to prepare you to think that you are innocent, then we will not have your submission---And I am for a sinners Repentance with all my heart.

Mr. Justice Jones. If your Client be willing to submit, let the KING have a Verdict in Law, and then he will find my Lord Chief Justice Scroggs full of pity and compassion ; and if I can see any signs of Repentance, I will promise you to intercede to my Lord for him.

Mr. Williams. One that came from my Client told me, that if he had offended, he would submit to any thing : and now here is his wife come.

Mr. Justice Jones. I would save him if I can, if he will throw himself into mercy.

Well, what do you say, Mrs. for your Husband ?

Mrs. Smith. My Lord, my Husband is very sick and weak, and is not able to come himself, or else he would have done it ; but I asked Mr. Williams if it were not best to submit to the Court.

Mr. Justice Jones. Are you content to own it shall be so ?

Mrs. Smith. I leave it to the Gentlemen, my Council, I shall acquiesce in what they think fitting.

Mr. Williams. Then I presume to admit the Record.

Mr. Justice Jones. Then you are to find for the KING, <sup>speaking to</sup> 'Tis the Cause of the KING, <sup>the Jury.</sup> although only my Lord Chief Justice be concerned.

'Tis a high scandal, a great scandal against a great Officer and Magistrate of the KING. I will say nothing more to aggravate the offence at this time, because I would invite Repentance in all persons that have offended in this, or the like cases.

*Then the Jury, being asked whether they were agreed on their Verdict, said yes, and chusing their Fore-man to speak for them, he gave the Verdict, guilty.*

Mr. Justice Jones. Well, Mistress, you have done very well, if, now you for your Husband came here to make a publick acknowledgment of his guiltiness, hereafter he shall go, and ingeniously make submission to my Lord, I know he is a person of that pity and compassion, that he loves no mans ruine, but de-

lights rather in the universal welfare of all people; and I promise this, that I will be an intercessor to my Lord in your Husbands behalf.

Mr. Recorder. And as far forth as I can contribute to it, I will do the same.

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Then came on the Tryal of Jane Curtis, Wife of Langley Curtis, for Publishing and Selling a Seditious Libel, called, A Satyr upon Injustice: Or Scroggs upon Scroggs.

Mr. Holt. **M**AY it please Your Lordship, and Gentlemen of the Jury, here is an Information brought against Jane Curtis, and it sets forth, that the defendant did publish and put to sale a seditious Libel against my Lord Chief Justice Scroggs, the Defendant pleads not Guilty, if we prove it upon her, you are to fine for the KING, and if not you are to say so, and no more.

Mr. Williams said (who was a Council for the Defendant) he would admit the Record, whereupon they proceeded no further to tryal, but the woman being called, she said,

Mrs. Curtis. I was ignorant in the matter, and knew no such thing, my Lord, my Husband, and please your Lordship was in the Country a hundred miles off of me, in *Lincolnshire*.

Mr. Justice Jones. You did it ignorantly, and simply, without any malice, and I suppose, you are heartily sorry for it. You see your Neighbour there Mrs. Smith, hath shewed good discretion in the behalf of her Husband; she has ingeniously declared that he shall come and make submission, and if I find you as submissive, and as sorry for what you have done, I may do the like for you.

Mrs. Curtis. In any thing that I have done, I know not my self Guilty, and if I am, I beg your Lordships pardon with all my heart, my Lord, or any bodies else.

Mr. Justice Jones. I know you will find mercy from my Lord Chief Justice, and therefore go and make your submission.

Then the Jury proceeded to give their verdict, and there Foreman said, Guilty.

F I N I S.